

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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NATHANIAL CHARLES HARRIEL, SR.,
Plaintiff,
v.
RENO POLICE DEPARTMENT, *et al.*,
Defendants.

Case No. 3:22-cv-00419-ART-CSD
ORDER ADOPTING REPORT AND
RECOMMENDATION (ECF No. 7)

Pro se Plaintiff Nathaniel Charles Harriel Sr. (“Harriel”) brings this action under 42 U.S.C. § 1983. Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge Craig S. Denney (ECF No. 7), recommending the Court: 1) grant Harriel’s second IFP application (ECF No. 5) and deny his first IFP application (ECF No. 1) as moot; 2) dismiss Harriel’s original complaint as moot (ECF No. 1-1); 3) allow Harriel to proceed with his Fourth Amendment claims against Officer Sanchez, but stay the action until Harriel’s underlying criminal case is resolved; 4) dismiss Harriel’s *Miranda* violation claim with prejudice; 5) dismiss the Reno Police Department, but give Harriel leave to amend and assert a new claim against the City of Reno if and when the stay is lifted as to the claims against Officer Sanchez; 6) dismiss Harriel’s claims against Judge Clifton with prejudice; 7) dismiss Harriel’s claims against Tyler Alton with prejudice; 8) dismiss Washoe County Jail, but grant Harriel leave to amend to attempt to assert a colorable *Monell* claim against Washoe county; 9) grant Harriel leave to amend with respect to his stay in solitary confinement, his medical care after he slipped and fell, and the delay in providing a signature for an inmate account; 10) grant Harriel 30 days to file a

1 second amended complaint; and 11) deny Harriel's motion for appointment of
2 counsel (ECF No. 3).

3 Plaintiff had until February 15, 2023 to file an objection. To date, no
4 objection to the R&R has been filed. For this reason, and as explained below, the
5 Court adopts the R&R in full.

6 The Court "may accept, reject, or modify, in whole or in part, the findings
7 or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where
8 a party fails to object to a magistrate judge's recommendation, the Court is not
9 required to conduct "any review at all . . . of any issue that is not the subject of
10 an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v.*
11 *Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) ("De novo review of the
12 magistrate judges' findings and recommendations is required if, but *only* if, one
13 or both parties file objections to the findings and recommendations.") (emphasis
14 in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that
15 the Court "need only satisfy itself that there is no clear error on the face of the
16 record in order to accept the recommendation.").

17 Because there is no objection, the Court need not conduct de novo review,
18 and is satisfied Judge Denney did not clearly err. Here, Judge Denney makes a
19 bevy of recommendations in this case. First, Judge Denney recommends
20 granting Harriel's second IFP application (ECF No. 5), mooted his first IFP
21 application (ECF No.1), and dismissing his first complaint—attached to the first
22 IFP application—as moot. (ECF No. 7 at 13). Second, Judge Denney recommends
23 allowing Harriel's Fourth Amendment claims for unlawful arrest and unlawful
24 search against Officer Sanchez to proceed, but staying that action pending the
25 resolution of Harriel's underlying criminal case. (*Id.*) The Court agrees with Judge
26 Denney because Harriel has pled plausible false-arrest and unlawful search
27 claims based on Officer Sanchez's alleged use of a non-existent fugitive warrant
28 to detain Harriel. Third, Judge Denney recommends dismissing Harriel's

1 *Miranda* violation claim with prejudice. (*Id.*) The Court agrees with this
2 recommendation as the Supreme Court recently held that a *Miranda* violation
3 does not provide a basis for a claim under 42 U.S.C. § 1983. *See Vega v. Tekoh*,
4 142 S.Ct. 2095, 2101 (2022). Fourth, Judge Denney recommends the dismissal
5 of the Reno Police Department; this is proper as the Reno Police Department may
6 not be sued as a separate entity without statutory authorization that is absent
7 here. *See Wayment v. Holmes*, 912 P.2d 816, 819 (Nev. 1996). As Judge Denney
8 notes, however, a claim against the City of Reno could be proper, and the Court
9 agrees that Harriel may seek leave to amend his complaint as to the City of Reno
10 in the event the stay is lifted as to the claims against Officer Sanchez. Fifth,
11 Judge Denney recommends the dismissal of Harriel's claims against Judge
12 Clifton and Tyler Alton with prejudice; the Court agrees as both of these
13 defendants are immune from suit under § 1983. Sixth, Judge Denney
14 recommends the dismissal of the Washoe County Jail but granting Harriel leave
15 to amend to assert a colorable *Monell* claim against Washoe County. The Court
16 agrees as Washoe County is the proper defendant here, rather than the Jail, but
17 Harriel does not make specific allegations as to Washoe County. Seventh, Judge
18 Denney recommends Harriel be granted leave to flesh out his claims regarding
19 solitary confinement, a delay in receiving a signature on an inmate account
20 statement, and a claim regarding his medical care. The Court agrees. Finally,
21 Judge Denney recommends the denial of Harriel's Motion for Appointment of
22 Counsel. (ECF No. 3). The Court agrees as the circumstances presented thus far
23 in this case do not constitute "exceptional circumstances" warranting the
24 appointment of counsel.

25 In sum, the Court agrees with Judge Denney. Having reviewed the R&R
26 and the record in this case, the Court will adopt the R&R in full.

27 It is therefore ordered that Judge Denney's Report and Recommendation
28 (ECF No. 7) is accepted and adopted in full.

1 It is further ordered that Harriel's second IFP application (ECF No. 5) is
2 granted.

3 It is further ordered that Harriel's first IFP application (ECF No. 1) is denied
4 as moot. However, Harriel is required to pay, through WCDF (or any other facility
5 or institution he is housed in), an initial partial filing fee in the amount of \$5,
6 within 30 days of the date of entry of this order. Thereafter, whenever his prison
7 account exceeds \$10, he is required to make monthly payments in the amount
8 of 20 percent of the preceding month's income credited to his account until the
9 full \$350 filing fee is paid. This is required even if the action is dismissed, or the
10 action is otherwise unsuccessful. The Clerk is respectfully directed to send a
11 copy of this order to the attention of Chief of Inmate Services for WCDF, 911 E.
12 Parr Blvd., Reno, NV 89512.

13 It is further ordered that Harriel's complaint (ECF No. 1-1) is dismissed as
14 moot.

15 It is further ordered that Harriel is allowed to proceed with his Fourth
16 Amendment claims for unlawful arrest and unlawful search against Officer
17 Sanchez, however, this action is stayed insofar as those claims are concerned
18 pending resolution of Harriel's underlying criminal case.

19 It is further ordered that Harriel shall file a notice with this court within
20 30 days of the date of this order advising the Court of the status of his underlying
21 criminal case.

22 It is further ordered that Harriel's claim based on the violation of *Miranda*
23 should be dismissed with prejudice.

24 It is further ordered that the Reno Police Department is dismissed;
25 however, Harriel is granted leave to amend to assert a claim against the City of
26 Reno when the stay is lifted as to the claims against Officer Sanchez (assuming
27 they are not dismissed with prejudice under *Heck*).
28

1 It is further ordered that Harriel's claims against Judge Clifton and Tyler
2 Alton are dismissed with prejudice.

3 It is further ordered that the Washoe County Jail is dismissed; however,
4 Harriel is granted leave to attempt to assert a colorable *Monell* claim against
5 Washoe County.


6 It is further ordered that Harriel is granted leave to amend with respect to
7 his stay in solitary confinement, his medical care after he slipped and fell, and
8 the delay in providing a signature for an inmate account.

9 It is further ordered that Harriel has thirty (30) days from the date of this
10 Order to file an amended complaint correcting the deficiencies noted in Judge
11 Denney's Report and Recommendation. The amended complaint must be
12 complete in and of itself without referring to or incorporating by reference any
13 previous complaint. Any allegations, parties, or requests for relief from a prior
14 complaint that are not carried forward in the amended complaint will no longer
15 be before the court. Plaintiff shall clearly title the amended pleading as "SECOND
16 AMENDED COMPLAINT." If Harriel fails to file a second amended complaint
17 within 30 days, then the action will only proceed as to the Fourth Amendment
18 claims against Officer Sanchez, which will be stayed pending resolution of his
19 underlying criminal case.

20 It is further ordered that Harriel's Motion for Appointment of Counsel (ECF
21 No. 3) is denied.

22 It is so ordered.

23
24 DATED THIS 5th Day of April 2023.

25
26 
27 ANNE R. TRAUM
28 UNITED STATES DISTRICT JUDGE